CONSTITUTIONS AND
CONSTITUTIONAL
CONVENTIONS

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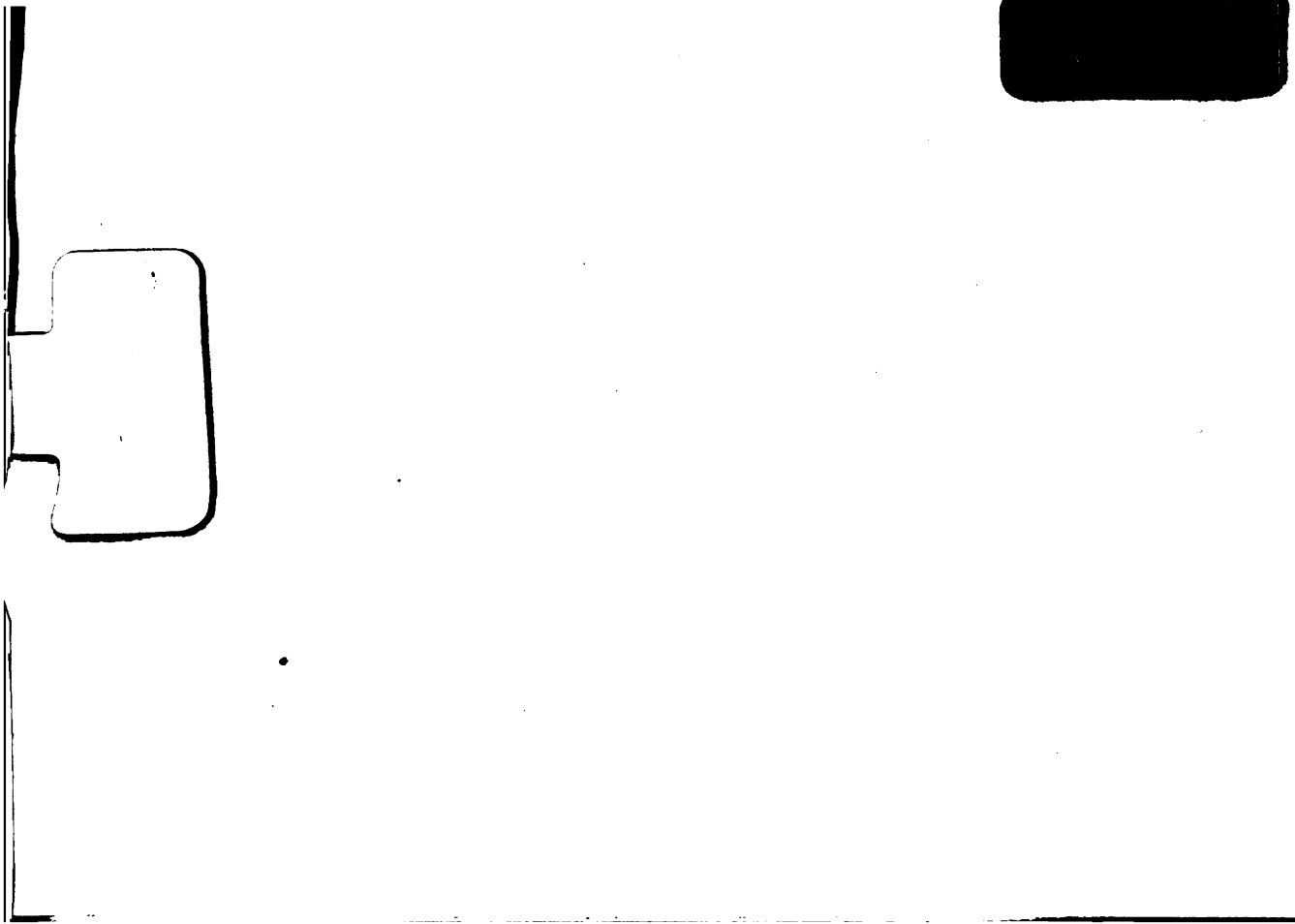

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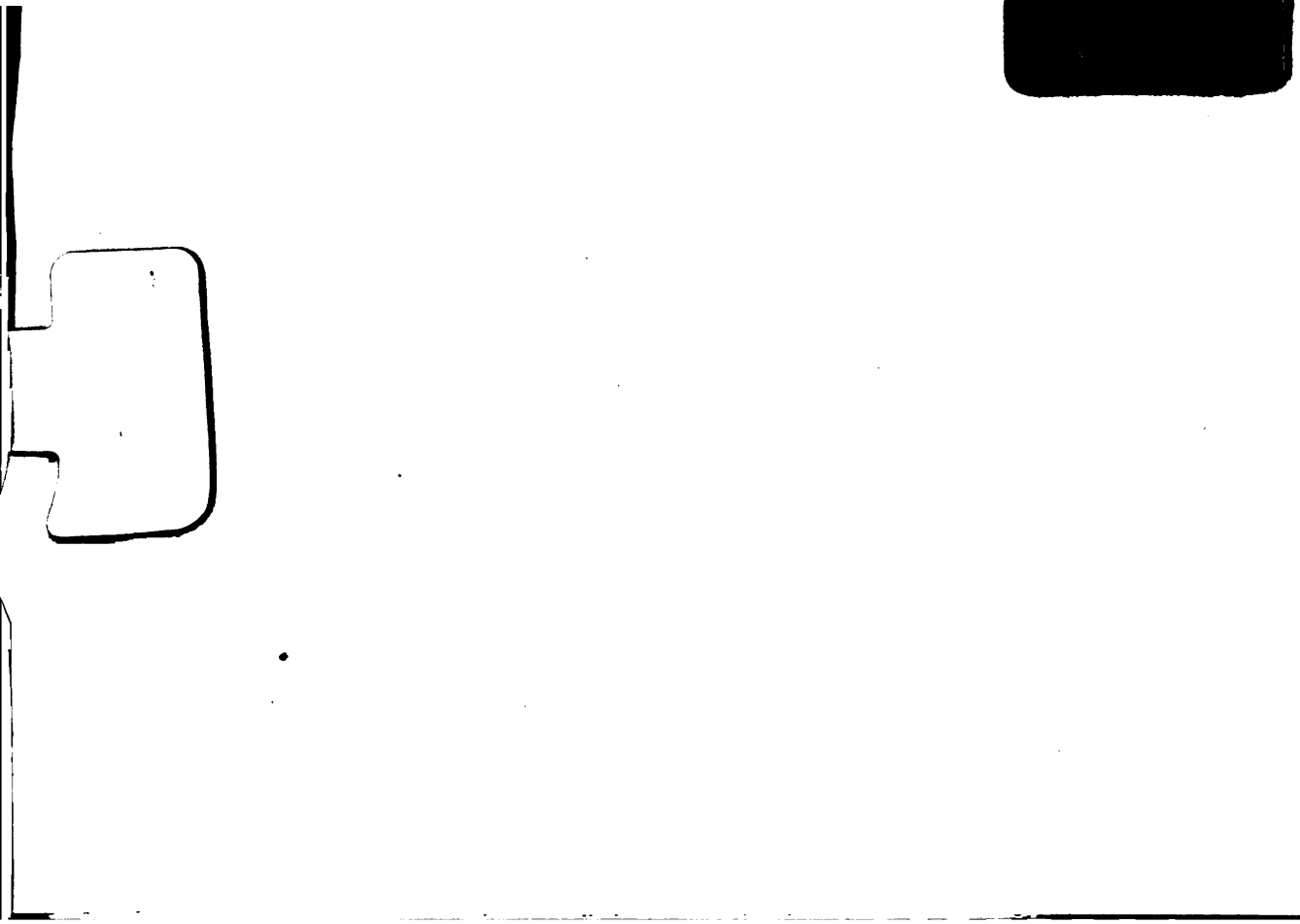
By ISIDOR LOEB



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# CONSTITUTIONS AND CONSTITUTIONAL CONVENTIONS IN MISSOURI

BY ISIDOR LOEB.

Missouri has had five Constitutional Conventions but only three Constitutions have existed in the history of the State. The first of these was adopted by the Convention of 1820 and continued to operate until 1865. In 1845 a Constitutional Convention submitted a Constitution which was rejected by the voters. In 1861 a Convention was called for the primary purpose of determining the attitude of Missouri regarding the Union. After deciding by a practically unanimous vote against secession, the Convention adjourned instead of disbanding. It held four other sessions during 1861 and the two succeeding years and practically carried on a provisional government. While it adopted a number of constitutional amendments, the Convention did not undertake to make any general revision of the fundamental law of the State. In 1864 the voters approved the plan of calling a Constitutional Convention, which met in 1865 and drafted a Constitution which was adopted by the voters. This Constitution remained in effect until it was superseded by the present Constitution which was adopted in 1875.

While this article is primarily concerned with the Constitutional Convention of 1875 and the conditions which influenced its action, it will be desirable to consider briefly the preceding Constitutional Conventions which drafted Constitutions and to point out some of the more important features of these instruments. Many provisions of the existing Constitution had their origin in the earlier documents.

## Constitutional Convention of 1820.

Missouri's admission into the Union was delayed by the contest over the question of slavery extension, but finally an

Act of Congress approved March 6, 1820, authorized a Convention for the purpose of forming a Constitution and State government. This Convention, which consisted of forty-one delegates chosen from the fifteen counties in accordance with the apportionment prescribed in the congressional act, met in St. Louis on June 12, 1820, and completed its work in a little more than five weeks, adjourning on July 19th. The Constitution was adopted by a vote of forty to one. The Act of Congress did not require the submission of the Constitution to the voters and the Convention assumed that its adoption of the Constitution marked the establishment of the new State.[1] It made provision for an election for State officers to be held on August 28, 1820, and for the inauguration of the new government on September 18, 1820.[2]

While the machinery of State government was put into operation as provided by the Constitution, the State's Senators and Representative in Congress were not permitted to take their seats because of objection to a clause of the twenty-sixth section of the third article which required the Legislature to pass laws to prevent free negroes from coming into the State. After a contest extending over a period of three months, the controversy was settled by the Second Missouri Compromise on March 2, 1821. This resolution of Congress required the passage of a "solemn public act" by the Missouri Legislature agreeing that the clause in dispute should never be made the basis of any law by which any citizen of any state shall be excluded from any privileges to which he is entitled under the Constitution of the United States. The General Assembly of Missouri passed this act which was approved by the Governor on June 26, 1821. A copy of the act was sent to President Monroe and thereupon in pursuance of the congressional resolution the latter on August 10, 1821, issued his proclamation setting forth the facts and stating that "the admission of the said State of Missouri into this Union is declared to be complete."

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[1]Constitution, 1820, Schedule, Sec. 1.
[2]Ibid., Sec. 9, 10.

The Constitution of 1820 consisted of thirteen articles dealing with the boundaries, distribution of powers, legislative power, executive power, judicial power, education, internal improvement, banks, militia, miscellaneous provisions, permanent seat of government, mode of amending the Constitution and declaration of rights, in addition to a schedule containing temporary provisions for facilitating the transfer from Territorial to State government. The articles relating to education and internal improvement were brief and largely confined to a mandate for the encouragement of such matters by the Legislature. The article dealing with banks restricted the Legislature to the incorporation of one bank with not exceeding five branches and a maximum capital stock of five millions of dollars of which at least one-half must be reserved for the State. The militia article was likewise brief, providing merely the manner of choosing officers, while the provisions regarding the permanent seat of government left the General Assembly chief power of determining this question.

The legislative article was largely confined to provisions regulating composition, organization and procedure. The bicameral system was established and the principle of apportionment according to free white male population was adopted for each house, except that each county was to have at least one member in the House of Representatives. The membership of this House was not to exceed one hundred while that of the Senate was not to be less than fourteen nor more than thirty-three. Only a few sections contained positive restrictions upon legislative power and these related almost exclusively to some feature of the institution of slavery.[8] While the declaration of rights contained the usual limitations upon civil and criminal procedure, the Constitution did not contain the numerous restrictions upon legislative power which have appeared in the later documents. As a result the Constitution of 1820 was a relatively brief instrument, containing not exceeding 10,000 words.

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[8]Constitution 1820, Art. III, Sec. 26-28.

In addition to the Legislature the Constitution provided for the Executive and Judicial Departments which, in accordance with the principle of distribution of powers set forth in Article II, were to be distinct from and independent of each other as well as of the Legislative Department. The Constitution was one of the earliest to provide a four-year term for the Governor, who, however, was made ineligible to succeed himself. The Governor and Lieutenant-Governor were the only executive officials chosen by popular election. All of the other officials of the Executive Department provided for by the Constitution were appointed by the Governor except the treasurer who was chosen by a joint session of the two houses of the Legislature.[4] The Governor likewise appointed all judges, who held office during good behavior, but his appointment of these and of the principal executive officers required the consent of the Senate.[5] The Governor was also given a limited veto power but this could be overcome by an absolute majority in each house of the General Assembly.[6]

Suffrage and elections were not as yet considered of sufficient importance to deserve a separate article. Universal suffrage was provided for all free white adult male citizens of the United States, except members of the regular army or navy of the United States,[7] but occasion for the exercise of this suffrage was limited. The only elective State officials were members of the Legislature and the Governor and Lieutenant-Governor. The whole field of local government was left to legislative regulation, except that the Constitution provided for a sheriff and coroner in each county and these were to be chosen by popular election until otherwise provided by the General Assembly.[8]

Even in the matter of amending the Constitution there was no provision for popular referendum, amendments

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[4]Constitution, 1820, Art. III, Sec. 31; Art. IV, Sec. 12, 21; Art. V., Sec. 18; Art. IX, Sec. 3.

[5]Constitution, 1820, Art. V. Sec. 13.

[6]Constitution, 1820, Art. IV, Sec. 10, 11.

[7]Constitution, 1820, Art. III, Sec. 10.

[8]Constitution, 1820, Art. IV, Sec. 23.

being proposed by a two-thirds vote of each house of the Legislature and requiring for ratification a similar vote at the first session of the next succeeding General Assembly. No provision was made for a general revision of the Constitution.[9]

The Constitution of 1820 was typical of the period of its creation, occupying a somewhat advanced position in the matter of long terms for members of the Legislature (two and four years) and executive officials (four years, except Treasurer, two years) and of biennial instead of annual elections and sessions of the Legislature. The democratic movement had barely commenced and it did not appreciably affect the Constitution. The chief influence came, naturally from existing state constitutions and of these the most influential were those of Alabama (1819), Illinois (1818), Kentucky (1799), and Maine (1819), all of these except one falling in the group of most recently adopted constitutions.[10]

## Constitutional Convention of 1845.

Before the meeting of the Constitutional Convention of 1845, two series of amendments to the Constitution of 1820 had been adopted by the Legislature. The first group originally included ten sections proposed in less than one year after the adoption of the Constitution and seven of the sections were ratified in 1822.[11] Most of the amendments were intended to change those sections of the Constitution which provided a minimum salary of $2,000 for the Governor, Chancellor and Judges of the Supreme and circuit courts. These sections had been the subject of repeated opposition in the Constitutional Convention.[12] As amended the Legislature was left free to fix the compensation of these officials. Other amendments abolished the office of Chancellor but left the General Assembly power to establish a court or courts of chancery. United States officials who

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[9]Constitution, 1820, Art. XII.
[10]Shoemaker, *Missouri's Struggle for Statehood*, p. 250.
[11]Revised Statutes, 1825, Vol. I, pp. 65-67.
[12]Journal, Convention 1820, pp. 20, 21, 23, 24, 40.

were already ineligible to election as members of the General Assembly[13] were by one of these amendments disqualified to hold any office of profit under the State of Missouri.

The amendments as originally proposed by the Legislature in 1821 included sections transferring the power of appointing judges and the Auditor, Secretary of State and Attorney-General from the Governor to houses of the Legislature in joint session,[14] but these failed of ratification by the subsequent General Assembly. Notwithstanding this fact, one of the amendments proposed in 1821, which provided that the offices of the judges of the Supreme and circuit courts should expire at the end of the first session of the next General Assembly or as soon as their successors should be elected and qualified, was ratified in 1822.

The second group of amendments as proposed in 1833 was chiefly concerned with changes in the tenure and terms of judges and clerks of courts.[15] It was proposed to take the power of appointment from the Governor and, in the case of the clerks, from the courts, and to abolish the prov i sion under which all of such officials held office during good behavior. The Supreme Court Judges were to be elected by a joint session of the General Assembly while the circuit judges and the clerks of the county and circuit courts were to be elected by the voters of the circuits and counties respectively. All of these officials were to hold office for terms of six years. The offices of existing judges and clerks were to be vacated and provision was made for the electio of their successors. When these amendments were submitted to the Eighth General Assembly, all were rejected except those relating to clerks of the county and circuit courts and the vacation of the offices of existing circuit judges.[16] It was contended by a circuit judge that inasmuch as the section for vacating the offices of circuit judges had

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[13]Constitution, 1820, Art. III, Sec. II.

[14]Laws, 1821, p. 38.

[15]Laws of Missouri, 1832-33, pp. 3, 4.

[16]Revised Statutes, 1835, Vol. I, pp. 34, 35. Amendments which had been proposed in 1833 for changes in the northwestern and northeastern boundaries of the State were ratified in 1834.

been proposed in connection with the one providing a different term for circuit judges, the failure of the Legislature to ratify the latter made the former of no effect, notwithstanding its ratification. The Supreme Court held however the section providing for the vacation of the offices of circuit judges was an independent amendment and could stand alone.[17]

The failure of the attempt to introduce the elective principle and the limited term in the cases of judicial officers was partly responsible for the movement for a constitutional revision which commenced about this time. The population of the State which was only 66,586 in 1820 had increased to 383,702 in 1840 and by 1845 probably amounted to 500,000. It was naturally felt that the quarter century had introduced changes which made a revision desirable. The campaign received legislative approval in 1843.[18] In default of any definite provision in the Constitution of 1820 regarding general revision, the Legislature, in accordance with the prevailing constitutional principle, provided for a Constitutional Convention subject to the approval of the voters. This approval was given in 1844 by an overwhelming majority.[19] The act of 1843 provided that the Convention should consist of delegates chosen from the senatorial districts, each district electing twice as many delegates as the number of senators to which it was entitled. In August, 1845, sixty-six delegates were elected from the twenty-eight districts and the Convention met in Jefferson City on November 17, 1845.[20] The Convention was in session for nearly two months, adjourning on January 14, 1846. In contrast with the practical unanimity with which the Constitution of 1820 was adopted, the vote in the Convention of 1845 was forty-nine to thirteen. The negative vote foreshadowed opposition when, as provided in the Constitution, it was submitted to the voters in August, 1846.

[17]State v. McBride, 4 Mo. 303.

[18]Laws, 1842-3, pp. 26-28.

[19]Revised Statutes, 1845, p. 54 note. In 1835 a similar proposition had been rejected. Ter. Laws, Vol. II, pp. 433-435.

[20]Official Manual, 1915-16, p. 164.

The Constitution was rejected by a majority of over 9,000 in a total vote of 60,000.[21] Notwithstanding the defeat of the Constitution it will be desirable in this sketch of constitutional evolution to consider some of the more important features which distinguished it from the Constitution of 1820.

While the new document was somewhat larger in size, there did not yet appear those numerous provisions regulating and restricting the Legislature in detail. Significant, however, were the provisions restricting legislative power in incurring State debts, creating banks, lotteries and other corporations, granting divorces, regulating duels and passing private and local bills.[22] The growing lack of confidence in the Legislature is also manifested in the provision that no session shall continue longer than sixty days,[23] and in the requirement of a popular referendum upon constitutional amendments which could be proposed every four years by an absolute majority in each house of the Legislature.[24] The most important changes proposed, however, were those regarding the basis of representation in the House of Representatives and the tenure and term of judges.

It will be recalled that under the Constitution of 1820 each county was entitled to at least one Representative and the total number of Representatives could not exceed one hundred.[25] In 1845 there were ninety-six counties in Missouri and it was quite clear that additional counties would be created in the near future. Under these conditions, it was evident that the rule of apportionment according to white male population could not be carried out and that the counties with large population would have no more representation than the smallest counties. On the other hand after the number of counties reached one hundred, no new counties could be created without violating the above constitutional rule. In the Convention there was a contest

[21] Ibid.
[22] Constitution, 1845, Art. III, Secs. 31, 32, 34, 38, 39; Art. VIII.
[23] Ibid., Art. III, Sec. 24.
[24] Ibid., Art. X.
[25] Constitution, 1820, Art. III, Sec. 2.

between those who favored the plan of giving each county at least one Representative and those who advocated the establishment of a ratio and the refusal of representation to counties having less than this ratio. A compromise was effected and a ratio secured by dividing the total number of free white inhabitants by one hundred. Counties were given representatives according to their ratios as follows:

For three-fifths ratio, one representative; for one and two-thirds ratios, two representatives; for two and two-thirds ratios, three representatives; for four ratios, four representatives and so on above that number giving one additional member for each additional ratio. Counties containing less than three-fifths ratio which were contiguous to each other were to be joined into districts containing two-thirds ratio and given one member, but a county having less than three-fifths ratio which was not contiguous to another similar county was to be given one member.[26] While this provision did not go into effect, it was of some influence in determining the basis of representation adopted by constitutional amendment in 1849.[27]

On the question of the tenure and term of judges a compromise was also made. Supreme Court Judges continued to be appointed by the Governor while circuit judges were to be elected by the voters of the circuit. The terms of office were twelve and six years respectively.

### Constitutional Amendments, 1849-1865.

The rejection of the draft Constitution in August, 1846, was followed by numerous proposals for the amendment of the Constitution. As it required the joint action of two Legislatures to ratify, the first actual changes in the Constitution were not made until the session of 1848-49. Each succeeding General Assembly down to the Civil War ratified one or more constitutional amendments. The two most important changes proposed by the Constitution of 1845 were

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[26]Constitution, 1845, Art. III, Sec. 2.
[27]Laws, 1848-49, p. 6.

carried into effect in modified form by amendments ratified in 1849. As regards the judiciary, the appointive principle was retained for circuit as well as Supreme judges but the terms were changed to eight and twelve years respectively.[28] At the same session, however an amendment was proposed which being ratified by the Legislature at its session in 1850-51, established the elective principle for both sets of judges and a uniform term of six years.[29] At the same time amendments were ratified which, by introducing elective tenure in the offices of Secretary of State, Attorney-General, Auditor, Treasurer and Registrar of Lands, led to the introducton of the long ballot in Missouri State elections.[30]

The contest over the basis of representation in the House of Representatives was also settled by an amendment adopted in 1849.[31] While the plan of establishing a ratio introduced in the Constitution of 1845, was adopted, the divisor used in determining the ratio was one hundred and forty instead of one hundred. The smaller counties achieved a victory in the provision that a county with less than the ratio was nevertheless entitled to one Representative. Finally, there was now evidenced the desire to discriminate against the more populous counties by increasing progressively the number of ratios required for each additional Representative above two. Thus, for example, while a county with one and three-fourth ratios was entitled to two Representatives it was necessary to have three ratios for three Representatives; four and one-half for four Representatives; thirteen for eight Representatives, and twenty-four for twelve Representatives. The plan adopted, it is true, gave the more populous counties more representation than the previously existing system which, under the constitutional provision restricting the number of Representatives to one hundred, practically gave each county only one Representative. It was, however, much less in

[28]Laws, 1848-49, p. 8.
[29]Laws, 1850-51, pp. 45, 50.
[30]Ibid., pp. 47, 48.
[31]Laws, 1848-49, p. 6.

accord with the principle of popular representation than the provision of the constitution of 1845 and it foreshadowed further discrimination in the future against the large centers of population.

The same amendment which fixed the basis of representation restricted the Legislature's power to reduce the size of existing counties or to create new counties with less than five hundred square miles or to give separate representation to any new county unless the latter contained, when established, free white inhabitants equal to three-fourths of the ratio of representation. It also settled the question of limiting the legislative session by fixing the existing compensation of members of three dollars a day as the maximum for sixty days after which time they were to receive not exceeding one dollar per day except at a revising session when the higher amount could be received for one hundred days. While this provision was abolished by subsequent amendment in 1857,[32] it furnished the model upon which similar provisions in the Constitution of 1875 were based.

The limitation upon legislative power to grant divorces which had been incorporated in the Constitution of 1845,[33] was finally secured through the ratification of an amendment in 1853.[34] In 1857 the article on banks was changed so as to give the Legislature power to charter not exceeding ten banks with an aggregate capital not in excess of twenty millions of dollars.[35] Two years later, the Legislature was forbidden to incur any State debt or liability in excess of thirty millions of dollars, except in case of war.[36] The Constitution of 1845 contained a provision prohibiting the Legislature from creating any State debt to exceed at any time twenty-five thousand dollars, without the consent of a majority of the voters.[37] In support of this provision the president of the Constitutional Convention of 1845 pointed

[32] Laws, 1856-57, p. 5.
[33] Art. III, Sec. 32.
[34] Laws, 1852-53, p. 3.
[35] Laws, 1856-57, p. 6.
[36] Laws, 1858-59, p. 3.
[37] Art. III, Sec. 31.

out the danger that the Legislature, if not restricted, would incur huge debts to aid in the building of railroads.[38] His words were prophetic as in 1859, when the above amendment was passed, the amount of State credit loaned to railroads aggregated approximately twenty-five million dollars.[39]

The last amendment to the Constitution of 1820, adopted by the Legislature in 1861,[40] like one adopted in 1855,[41] was intended to validate the creation of a county smaller in area or population than permitted by the amendment dealing with the basis of representation which was adopted in 1849.[42]

## Convention of 1861-63.

It has been pointed out[43] that the Convention called in 1861 was not chosen for the purpose of modifying the Constitution of the State. In its second and subsequent sessions, however, this Convention found it necessary at times to carry on a provisional government and it assumed the authority to amend the Constitution from time to time. An ordinance of July 30, 1861, vacated the offices of the Governor, Lieutenant-Governor, Secretary of State and members of the Legislature and provided for the choice of their successors.[44] On October 12, 1861, the Convention provided for the abolition of certain offices, the reduction of salaries of others and a test oath for all civil officials.[45] This was followed in June, 1862, by an ordinance prescribing test oaths for all voters, officials, jurymen, attorneys, teachers, preachers, and officials of corporations.[46] At the same session it changed the constitutional date for general elec-

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[38]R. W. Wells. A Review of the New Constitution of the State of Missouri, p. 9. Pamphlet bound with Journal of Constitution Convention of 1845, in Library of State Historical Society of Missouri.

[39]Report of Auditor of Public Accounts Appendix, Journals of the twentieth General Assembly, pp. 52, 53.

[40]Laws, 1860-61, p. 4.

[41]Laws, 1854-55, p. 4.

[42]Laws, 1848-49, p. 6.

[43]Ante, p. 7.

[44]Appendix, Journal of Convention, June, 1862, p. 3.

[45]Ibid., p. 5.

[46]Ibid., p. 13.

tions from August to November,[47] and at its last session in 1863 passed a similar ordinance regarding the date for electing judges.[48] Finally, at its last session, the Convention passed an ordinance abolishing those provisions of the Constitution which restricted the Legislature's power over slavery and providing a plan for the gradual emancipation of slaves in Missouri.[49]

## Constitutional Convention of 1865.

Gradual emancipation was no longer acceptable and the demand arose for a new Constitutional Convention. This resulted in 1864 in the passage of an act providing for the submission of the question to the voters at the November election,[50] when the proposition carried by a large majority. As was true of the Convention of 1845, each senatorial district was entitled to twice as many delegates as it had senators. At this time there were twenty-nine districts each electing two delegates except the twenty-ninth (St. Louis county) which elected ten delegates. In accordance with the act of 1864, the delegates were chosen at the November election, when the question was submitted to the voters, and the Convention met at St. Louis on January 6, 1865.[51] The Convention was in session three months, adjourning on April 10, 1865. The Constitution was adopted by a vote of thirty-eight to thirteen and ratified on June 6, 1865, by the small majority of 1,862 in a total vote of 85,478.[52]

The Constitutional Convention act provided that the Convention should consider first, amendments necessary for the emancipation of slaves and, second, those necessary to restrict suffrage to loyal citizens and such other amendments essential to the public good.[53]

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[47]Ibid., p. 21.
[48]Appendix, Journal of Convention, June, 1863, p. 3.
[49]Ibid., p. 4.
[50]Laws, 1863-64, pp. 24-26.
[51]Ibid.
[52]Journal, Convention, 1865, p. 280.
[53]Laws, 1863-4, p. 25.

While the Convention decided to make a general revision of the Constitution, its decisions on the two enumerated matters were of greatest importance. The question of slavery was disposed of on the fifth day when an ordinance decreeing immediate and unconditional emancipation was passed by a vote of sixty to four.[54] The substance of this ordinance became section two of Article I of the new Constitution.

The suffrage question was of so much importance that the entire Article II was devoted to it. The general qualifications were substantially the same as in the Constitution of 1820 with two exceptions. An alien who had declared his intention to become a citizen of the United States not less than one year nor more than five years and who was otherwise qualified, could vote.[55] After January 1, 1876, all persons not qualified voters before that date must be able to read and write in order to vote, unless the inability was the result of physical disability.[56] Negro suffrage was not established by the Constitution but in 1867 the Legislature submitted an amendment for this purpose,[57] which was rejected by the voters in 1868. Two years later a similar provision was combined with an abrogation of the "ironclad oath" and other objectionable sections of the Constitution of 1865[58] and ratified later in the year by the voters.[59]

In the matter of disqualifications for voting, however, important changes were introduced. These made the Constitution of 1865 notorious and unpopular, and were the chief factors contributing to its revision. The disqualifications for voting, office holding and the practice of professions which had been introduced by the Convention during the war were continued and made much harsher and more sweeping, with the effect that practically all who had in any

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[54]Journal, Convention of 1865, pp. 25-27.
[55]Constitution, 1865, Art. II, Sec. 18.
[56]Ibid., Sec. 19.
[57]Laws, 1867, p. 12.
[58]Laws, 1870, p. 503.
[59]See below, p. 21.

way sympathized with the South were disqualified.[60] In order to enforce these restrictions, all persons affected were required to take an oath whose character is shown in the name "iron-clad oath" which came to be applied to it.[61] As regards the suffrage the restrictions were made more severe by the requirement for the registration of all voters under which the taking of the oath was a prerequisite to registration and voting, but not conclusive of the right to be registered or to vote which was finally passed upon by officials of registration.[62] The great opposition to these provisions is shown by the fact that though the Convention provided[63] that no one should vote on the ratification of the Constitution without taking the test oath there was only a very small majority in its favor.[64] The opposition continued and increased after the Constitution went into effect. The Legislature by an absolute majority in each house could suspend or repeal the disqualification of voters after January 1, 1871, and the disqualifications in other cases after January 1, 1875.[65] Public opinion, however, was not willing to wait. In 1866 the United States Supreme Court declared the disqualifications for the practice of professions unconstitutional,[66] and in 1870 the Legislature proposed a series of amendments abrogating the remaining disqualifications and the test oath.[67] These were ratified at the November election by an overwhelming majority. Finally, an amendment proposed in 1873[68] and ratified the following year, abolished the section requiring general registration of voters, and substituted a provision giving the Legislature authority to provide for registration in cities with more than ten thousand inhabitants.

The Constitution of 1865 omitted the articles in the

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[60] Constitution, 1865, Art. II, Sec. 3.
[61] Ibid., Secs. 5-14.
[62] Ibid., Sec. 5.
[63] Constitution, 1865, Art. XIII, Sec. 6
[64] Ante, p. 19.
[65] Constitution, 1865, Art, II, Sec. 25.
[66] Cummings v. Missouri, 4 Wall. 277.
[67] Laws, 1870, pp. 502-504.
[68] Laws, 1873, p. 401.

Constitution of 1820 dealing with boundaries, internal improvement and permanent seat of government but added separate articles dealing with suffrage and impeachments. While it had one less article it had increased in size about fifty per cent and contained a total of about 15,000 words. About one-half of this increase was due to the suffrage article. The articles dealing with declaration of rights, banks and corporations, education, miscellaneous provisions and mode of amending the Constitution were also somewhat expanded, the latter article now including specific provision for a Constitutional Convention[69] and changing the process of amendment to the popular referendum proposed by the Constitution of 1845[70] except that the Legislature was unrestricted as to time in the proposal of amendments, and ratification now required only a majority of the votes cast on the amendments instead of a majority of the votes at the election.[71] This was an early recognition of one of the chief defects of popular referendum—the failure of the voters to cast a vote either yes or no on the proposition.

While the expansion of the Constitution was not as yet due to the inclusion of numerous positive restrictions upon the Legislature, some of these appear at this time. The power of special legislation had been abused[72] and the Legislature was expressly forbidden to enact special laws in thirteen classes of cases.[73] Moreover, it was not to pass any special law for any case in which a general law could be made applicable.[74] However, as the Supreme Court held that the question of applicability was left to the decision of the Legislature[75] the latter did not constitute an effective limitation. While the provision limiting the amount of the State debt which was adopted in 1859[76] was not included,

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[69]Constitution, 1865, Art. XII, Sec. 3.

[70]Ante, p. 14.

[71]Constitution, 1865, Art. XII, Sec. 2.

[72]See table in Harper, Local and Special Legislation in Missouri, Manuscript in Library of University of Missouri.

[73]Constitution of 1865, Art. IV, Sec. 27, Art. VIII, Secs. 4, 5.

[74]Ibid.

[75]Henderson v. County Court of Boone County, 50 Mo. 317.

[76]Ante, p. 17.

it was provided that the credit of the State should not be given or loaned in aid of any person or corporation and that this should not be done in the case of any county or local subdivision without the consent of two-thirds of the voters of such subdivision.[77] There was also apparent a tendency to introduce additional restrictions upon legislative procedure and at this time was established the provision that for the passage of bills an absolute majority with the yeas and nays entered upon the journal should be required.[78]

In the House of Representatives the basis of representation was determined according to the general plan adopted in 1849.[79] The divisor, however, was two hundred instead of one hundred and forty, resulting in a relatively smaller ratio and a larger House.[80] While this was advantageous to the larger counties it was offset by an increase in the number of ratios required for additional Representatives. While each county with one ratio or less was to have one Representative, it took two additional ratios to secure a second Representative and for each additional Representative three ratios were required. This plan discriminated in favor of the smallest counties but operated proportionally among the larger counties, differing in this regard from the provisions of 1849 and the plan adopted in the Constitution of 1875. The single ticket plan of representation was introduced at this time, the county court being required to divide the county into as many compact and convenient districts as the number of representatives to which it is entitled, the districts to be as nearly as may be of equal population.[81] The same principle also was now established for the Senate which was to consist of thirty-four members each chosen for a separate district. The districts were to be fixed by the Legislature, except in counties entitled to more than one

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[77]Constitution, 1865, Art. XI, Secs. 13, 14.
[78]Constitution, 1865, Art. IV, Sec. 24.
[79]Ante, p. 16.
[80]Constitution, 1865, Art. IV, Sec. 2.
[81]Ibid.

Senator, where they were to be determined by the county court as in the case of Representatives.[82]

The principle of popular election as it had been extended in 1851 was retained for officials of the Executive and Judicial Departments except that the office of Registrar of Lands was no longer mentioned.[83] The terms of the executive officials except the Superintendent of Schools were reduced from four to two years.[84] Provision was made for dividing the State outside of the county of St. Louis into not less than five districts, each to embrace at least three judicial circuits. The circuit judges in each district were to constitute a district court which was to be an intermediate court of appeal between the circuit and Supreme Court.[85] The judges of the circuit court of St. Louis county sitting as a court in banc constituted a similar court.[86] In 1870, however, the Legislature proposed an amendment abolishing the district courts[87] and this was ratified by the voters. Two years later an amendment[88] was ratified which increased the number of Supreme Court Judges to five and their terms to ten years.

Leaving aside sections such as suffrage and slavery, which were the direct outgrowth of the war, the Constitution of 1865 did not constitute any radical departure from its predecessor, as the latter had been modified by amendments adopted from time to time as indicated above. While provisions were incorporated for the purpose of checking or preventing certain evils which had arisen there is not manifest any striking tendency to place undue restrictions upon the Legislature.

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[82]Constitution, 1865, Art. IV, Secs. 4-6.

[83]Constitution, 1865, Art. V, Sec. 16; Art. VI, Secs. 7, 14.

[84]Ibid., Art. V, Secs. 3, 12, 16; Art. IX, Sec. 3. The treasurer had a two-year term under the Constitution of 1820, Art. III, Sec 31.

[85]Ibid., Art. VI, Sec. 12.

[86]Ibid., Art. VI, Sec. 15.

[87]Laws, 1870, p. 500.

[88]Laws, 1871-72, Resolutions, p. 3.

## Constitutional Convention of 1875.

While there is evidence that after the elimination of the "iron-clad oath" and its accompanying sections the people were fairly well satisfied with the Constitution of 1865, the overthrow of the radical Republicans in the election of 1870 made it inevitable that their chief work should be subjected to attack. In his inaugural message in 1871, Governor B. Gratz Brown advised the Legislature to consider the question of a Constitutional Convention.[89] Two years later, at the conclusion of his term, he renewed his recommendation in stronger words.[90] At the same time, the new Governor, Silas Woodson, a moderate Democrat who had been chosen as a compromise candidate, in his inaugural address, spoke at length upon the subject.[91] While recognizing that the Constitution still contained some objectionable provisions, he was unwilling to recommend a convention because of the expense and the danger that it would be a partisan body. He stated that both branches of the Republicans were opposed to revision and while some Democrats agreed with them he believed that Democrats only favored the proposition. Moreover, he believed that defects in the Constitution could be remedied by amendments proposed by the Legislature. Governor Woodson evidently became converted to the prevailing sentiment of his party as on March 25, 1874, he approved the "Act to authorize a vote of the people to be taken upon the question whether a convention shall be held for the purpose of revising and amending the Constitution of this State."[92] That he was right in his estimate of the opposition to the measure is shown by the fact that at the election the following November the proposition carried by a majority of only 283 in a total vote of 222,315.[93]

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[89]Senate Journal, 26th General Assembly, p. 33.
[90]Senate Journal, 27th General Assembly, p. 20.
[91]Ibid., pp. 64-66.
[92]Laws, 1874, p. 57.
[93]Encyclopedia of the History of Missouri, Vol. II, p. 113.

Under the provisions of the Constitution,[94] the Governor ordered an election to be held on January 26, 1875, at which two delegates were elected from each of the thirty-four senatorial districts, In accordance with the act of 1874,[95] the Convention met in the Capitol at Jefferson City on May 5, 1875. It was in session about one week less than the Convention of 1865, adjourning on August 2, 1875. The Constitution was adopted by the unanimous vote of the sixty members present and was later signed by all sixty-eight members. It was ratified at a special election on October 30, 1875, by the large majority of 76,688.[96] The total vote, 91,205, was only forty-one per cent of the vote cast the preceding November on the question of holding a Convention. The fact that the vote on the question of ratification was cast at a special election is probably the chief cause for the decrease, The large increase in the majority was doubtless due to popular approval of some of the changes proposed by the Constitutional Convention. Before adjourning the Convention unanimously adopted an address to the people containing a "brief statement of the more important changes proposed, with some of the advantages supposed to result from these changes."[97] While some of the benefits anticipated have not been realized, the statement is of much value as an expression of the opinion of those who were instrumental in drafting the new provisions.

The most obvious difference between the new Constitution and its predecessors is in its size, which showed an increase of nearly 200 per cent over the Constitution of 1820 and of 100 per cent over that of 1865. In seeking an explanation for this increase it is first to be noted that the Constitution of 1875 consisted of fifteen articles and a schedule. A brief article dealing with boundaries was restored and two new articles devoted to counties, cities and towns and

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[94]Constitution of 1865, Art. XII, Sec. 3.
[95]Laws, 1874, p. 57.
[96]Encyclopedia of History of Missouri, Vol. II, p. 114.
[97]See below, p. 876.

to revenue and taxation were now added. These two articles account for about one-third of the increase over the Constitution of 1865. There was a considerable decrease in the size of the article dealing with suffrage and elections which was more than offset by increases in the articles dealing with the judiciary, education, corporations and militia. The greatest increase, however, is found in the article on the Legislative Department, which expanded more than 200 per cent. As the provisions in the articles on counties, cities and towns, revenue and taxation, and the other articles indicated above are in effect almost entirely limitations upon legislative power it may be concluded that the expansion in the size of the Constitution was due to a growing lack of confidence in the Legislature and to the desire of the people to regulate matters for themselves. Each of these causes would lead to the placing of restrictions upon the Legislature, the former in a positive form while the latter would result in placing in the Constitution regulations in detail which would constitute a check upon legislative action regarding such matters.

There is plenty of evidence that there had developed a lack of confidence in the Legislature. This was manifested by provisions in the Constitution of 1865 and constitutional amendments adopted from time to time as well as in messages of Governors McClurg, Brown, Woodson and Hardin.[98] Among the most important causes for this popular distrust was the abuse of the power of special legislation and the policy of authorizing State and local aid for railroads. As a result of the latter the State as well as counties, townships, cities and other local subdivisions had incurred large debts with resulting increase of taxes. The Civil War and later the panic of 1873 had increased the difficulties of the situation and had caused serious embarrassment in State and local finances.[99] The members of the Constitutional Convention had personal experience with

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[98]Senate Journals; 1871, pp. 19, 20; 1873, p. 27; 1874, p. 17; 1875, pp. 27, 40.
[99]Million, *State Aid to Railways in Missouri.*

these conditions and their constituents were demanding relief and safeguards for the future. As a result the Constitution of 1875 was distinguished for possessing greater restrictions upon legislative power than any of its contemporaries in other states and today there are few state constitutions which can compare with the strictness of its provisions.[100]

Some members of the Convention wished to change the prevailing rule of interpretation of the powers of the Legislature by providing that the General Assembly should have only such powers as are granted to it.[101] While this extreme position was not adopted, the prevailing tendency is shown by the fact that in drafting the article on the Legislature the Convention set off sections 43 to 56 inclusive under the specific title, "Limitation of Legislative Power." As previously indicated, however, important limitations upon legislative power are contained in other articles.

In considering the restrictions upon the Legislature introduced by the Constitution of 1875, it is natural to begin with financial limitations as these were the most striking and of greatest significance. In the endeavor to prevent the impairment of public credit through the creation of large debts, the Convention did not follow the policy adopted in 1859[102] of fixing a maximum but returned to the plan proposed in the Constitution of 1845,[103] increasing the amount of debt which could be incurred from the $25,000 proposed in 1845 to $250,000, but requiring for any debt in excess of this amount the consent of two-thirds of the voters instead of a mere majority as under the earlier plan.[104] The same general plan was followed as regards counties, cities, school

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[100]Dry, *The Article on the Legislature in the Missouri Constitution of* 1875. Manuscript in Library of University of Missouri. This graduate dissertation is a study of the evolution of the Article on the Legislature in the Constitutional Convention of 1875, and includes a comparison of its provisions with those of similar articles in the Constitutions of 1820 and 1865 and in contemporary constitutions in other American states.

[101]Ibid., pp. 121-123; see below, p. 175.

[102]Ante, p. 17.

[103]Ante, p. 17.

[104]Constitution, 1875, Art. IV, Sec. 44.

districts and other subdivisions. No debt could be incurred in any year in excess of the revenue for such year without the consent of two-thirds of the voters, but there was the further important restriction that even with such consent the total debt of any such locality should not exceed five per cent of the value of the taxable property of such district, except for the erection of a court house or jail.[105] It was also required that in all such cases provision must be made for a tax sufficient to pay the interest and to retire the principal within thirteen years in the case of the State and within twenty years in other cases. There was also retained the provision of the Constitution of 1865[106] prohibiting the giving, loaning, or pledging of the credit of the State in aid of any person or corporation[107] and counties and other local subdivisions were now subject to a similar requirement,[108] instead of being permitted to do this with the consent of the voters as in 1865.[109]

The power of raising revenue by taxation was also seriously restricted. The Constitution of 1865 provided that no property should be exempt from taxation except that used exclusively for public schools, and that belonging to the United States, the State and local subdivisions.[110] Aside from this provision the Constitutions of 1820 and 1865 left the Legislature entirely free in establishing the system of taxation. While the Constitution of 1875 modified the above restriction by permitting the Legislature to enact general laws exempting a limited amount of property from taxation when used exclusively for educational, religious or charitable purposes,[111] it went much further in the other direction and imposed restrictions upon the power of the Legislature to determine the kind and rate of taxation and its method of assessment and apportionment for State and

[105]Ibid., Art. X, Sec. 12.
[106]Ante, p. 23.
[107]Constitution, 1875, Art. IV, Sec. 45.
[108]Ibid., Sec. 47.
[109]Ante, p. 23.
[110]Constitution, 1865, Art. XI, Sec. 16.
[111]Constitution, 1875, Art. X, Sec. 6.

local purposes. The general property tax system had been established for many years as a result of legislative enactment, but the provisions of Article X of the Constitution of 1875 made this system compulsory upon the Legislature. As the evil results of uncontrolled local assessments had made themselves manifest, the Constitution provided for a State Board of Equalization.[112] Unfortunately, however, by providing that this board should consist of the Governor, State Auditor, Treasurer, Secretary of State and Attorney-General, the Constitution prevented the Legislature from establishing an efficient central control over the local assessing officials.

A low maximum tax rate was fixed for State purposes,[113] and local authorities in counties, cities and towns and schools were limited by the establishment of similar maximum rates.[114] The latter rates could be increased for the purpose of erecting public buildings when approved by two-thirds of the voters and for general school purposes a higher rate, not exceeding a second maximum, could be voted by a majority of the taxpaying voters.[115] As these maximum rates were not established on any logical basis, serious inconvenience and hardship have resulted from their operation. Thus, for example, the maximum rate for State purposes was fixed at twenty cents on the hundred dollars valuation of property but it was provided that when the taxable property of the State amounted to nine hundred million dollars the rate should not exceed fifteen cents. When in 1892 it became necessary to reduce the rate to fifteen cents because the valuation exceeded nine hundred million there was an actual loss in State revenue from this source of nearly four hundred thousand dollars for that year.[116] The rates for local purposes were even more illogical and arbitrary. In the case of counties they varied according to assessed value, in some cases increasing and in others decreasing with

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[112]Ibid, Sec. 18.
[113]Ibid., Art. X, Sec. 8.
[114]Ibid., Art. X. Sec 11.
[115]Ibid.
[116]Report, State Auditor, 1891-92, p. 21.

an increase in the valuation. In cities the basis was population and here the arrangement was more scientific as the rates uniformly increased with increase in population. There was a flat rate of forty cents for school purposes in all districts but this could be increased in the manner indicated above to one dollar in town and city school districts, while without any rational basis of distinction, rural school districts were restricted to sixty-five cents.

The legislative power of apportioning taxes was restricted by provisions requiring all property to be taxed in proportion to its value,[117] and establishing the rule of uniformity as regards the same class of subjects within the territorial limits of the taxing authority.

The Constitution likewise limited the legislative power to control expenditures. Both of the previous Constitutions had provided that no money should be paid out of the treasury except as appropriated by law,[118] and an amendment adopted in 1870 had prohibited any appropriation or donation by the State or localities in aid of any religious purpose or organization.[119] The Constitution of 1875 not only continued these restrictions,[120] but added others of importance. The order in which appropriations should be made was set forth under seven heads, the last including appropriation for the pay of the General Assembly with the evident purpose of insuring that none of the preceding items would be omitted or overlooked before adjournment.[121] The third item of appropriation was for free public school purposes. The Constitution also provided that not less than 25 per cent of the State revenue, exclusive of the interest and sinking funds, should be set aside annually for the support of public schools.[122] The Legislature was also forbidden to give or to authorize any county or other

[117]Constitution, 1875, Art. X, Sec. 4.
[118]Constitution, 1820, Art. III, Sec. 31; Constitution, 1865, Art. XI, Sec. 6.
[119]Laws, 1870, p. 501.
[120]Constitution, 1875, Art. IV, Sec. 43; Art. XI, Sec. 11.
[121]Ibid., Art. IV, Sec. 43.
[122]Ibid., Art. XI, Sec. 7.

locality to give public money or thing of value to any individual or corporation except in case of public calamity.[123]

Second in importance only to the financial limitations were the restrictions upon special legislation. As previously indicated,[124] this power of the Legislature had been abused, with the result that the Constitution of 1865 prohibited its exercise in thirteen classes of cases and undertook to prevent it in all cases in which a general law could be made applicable. While the prohibition prevented special legislation in the cases enumerated, the latter provision was not effective as the Legislature could determine the question of applicability. Hence the evil continued during the next decade, the percentage of local and special acts exceeding that of public general laws.[125]

The members of the Constitutional Convention of 1875 were well aware of the extent and evils of special legislation and they proceeded to adopt effective limitations. In the first place the number of cases in which the Legislature was absolutely forbidden to enact special laws was increased to thirty-two.[126] In the next place while the Constitution of 1865 was followed in forbidding special legislation in all cases where a general law could be made applicable, the entire matter of applicability was expressly made a judicial question to be "judicially determined without regard to any legislative assertion on that subject."[127] While the Legislature retained the power of repealing existing special laws it was forbidden to indirectly enact a special law by the partial repeal of a general law.[128] Finally, for the cases outside of the enumerated classes where a general law could not be made applicable, the Legislature's power to enact a special law was restricted by a provision requiring publicity of the proposed measure for thirty days prior to its introduction

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[123]Ibid., Sec. 46, 47.

[124]Ante, p. 22.

[125]See table in Harper, *Local and Special Legislation in Missouri*, Manuscript in Library of University of Missouri.

[126]Constitution, 1875, Art. IV, Sec. 53.

[127]Ibid.

[128]Ibid.

as a bill.[129] The effectiveness of these restrictions is shown in the great reduction in the mass of legislation following the inauguration of the Constitution of 1875. The average number of pages in the session acts of a General Assembly during the decade after the adoption of the Constitution was only 275 as compared with 769 during the preceding ten years.[130]

Among the matters concerning which the Legislature was forbidden to enact special laws there were a number affecting counties, cities, townships, etc. The subject of local government, moreover, had assumed so much importance that a separate article was devoted to counties, cities and towns, and the Legislature's power in the field was correspondingly reduced. Provisions which already existed regarding changes in the size of counties and removal of county seats were continued and amplified.[131] While the Constitution did not undertake to regulate county organization in detail, it provided as did the Constitutions of 1820 and 1865 for the election of a sheriff and coroner in each county.[132] Provision was also made for a county court to transact county business[133] and express constitutional authorization was given for a township organization law which could be adopted by the voters of any county.[134] While the Constitution forbade special legislation regarding cities, it did not make a single uniform organization necessary. The Legislature was authorized to classify cities in not exceeding four groups and to make provisions by general law so that the cities in each class would possess the same powers.[135]

It is interesting to note, moreover, that despite the restrictions upon special legislation, the Constitution recognized the necessity for it in the case of large cities but left such

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[129]Constitution, 1875, Art. IV, Sec. 54.
[130]Harper, *Local and Special Legislation in Missouri.*
[131]Constitution, 1875, Art. IX, Secs. 2-5.
[132]Ibid., Secs. 10, 11.
[133]Constitution, 1875, Art. VI, Sec. 36.
[134]Ibid., Art. IX, Secs. 8, 9.
[135]Ibid., Sec. 7.

power in the hands of the voters of the city. This was done through the invention of the "home rule charter" provision. While this was introduced for the benefit of St. Louis,[136] similar sections were adopted for any city with more than one hundred thousand inhabitants.[137]

Under these provisions the voters of the city may elect a board to draft a charter subject to certain constitutional restrictions and if this charter is later ratified by the voters it bec omes the organic law of the city. While the "home rule" provisions do not entirely exempt the cities from control by the Legislature,[138] they give them much greater freedom in determining their organization and activities and are justly regarded as a valuable c ontribution to the betterment of city government not only in Missouri but in many other states.[139] It should finally be noted in this connection that the provisions of the Constitution regarding St. Louis authorized the separation of the city from the county and provided that after such separation the city for purposes of representation in the Legislature, collection of State revenue, and all other functions in relation to the State, should be treated in the same manner as if it were a county.[140]

Before leaving the subject of limitations upon the Legislature it is desirable to note the introduction in the Constitution of 1875 of numerous provisions restricting legislative procedure. A few regulations of this nature appeared in the Constitution of 1820 and these were expanded in 1865. In 1875, however, the subject was considered so important that nineteen sections of the legislative article were grouped under the title "Legislative Proceedings."[141] These included the restrictions which had appeared in previous constitutions with significant changes and additions, all indicating distrust of the Legislature and desire

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[136]Ibid., Secs. 20-25.

[137]Ibid., Secs. 16, 17.

[138]See for a discussion of the decisions of the Supreme Court on this point, Harper, *Local and Special Legislation in Missouri.*

[139]See McBain, *Law and Practice of Municipal Home Rule.*

[140]Constitution, 1875, Art. IX, Secs. 20-25.

[141]Constitution, 1875, Art. IV, Secs. 24-42.

to establish safeguards against hasty and ill considered legislation. It was specifically provided that no law should be passed except by bill[142] which must be reported upon by a committee, printed and read on three different days in each house.[143] The proviso in former Constitutions[144] giving each house by a two-thirds vote the power to suspend the latter rule was now omitted. The requirement for an absolute majority on a yea and nay vote for the passage of bills, introduced in 1865[145] was retained,[146] and the same rule was now applied to the approval by one house of amendments to its bills which have been adopted by the other and to the adoption of reports of conference committees.[147]

As in 1845 and 1865, the most important question relating to the organization of the Legislature was that of the basis of representation in the lower House. The proposals submitted by members of the Convention ranged from that of representation proportional to population as in the Senate, to that of one Representative for each county, regardless of its size.[148] The St. Louis members naturally favored the former plan, but as they recognized that it was hopeless, they concentrated their strength upon the demand for a reduction in the number of ratios required for additional Representatives. While they were not completely successful in their efforts and insisted upon presenting a minority report, the plan recommended by the committee and adopted by the Convention was more favorable to the larger counties than that contained in the Constitution of 1865.[149]

The ratio was determined in the same manner, by dividing the population of the State by two hundred.[150] As before, each county with one ratio or less was to have one Representative. However, instead of two additional ratios

[142]Ibid., Sec. 25.
[143]Ibid., Secs. 26, 27.
[144]Constitution, 1820, Art. III, Sec. 21; Constitution, 1865, Art. IX, Sec. 23.
[145]Constitution, 1865, Art. IV, Sec. 24.
[146]Constitution, 1875, Art. IV. Sec. 31.
[147]Ibid., Sec. 32.
[148]Dry, *The Article on the Legislature in the Missouri Constitution of 1875*, pp. 11-35, Manuscript in Library of University of Missouri.
[149]Constitution, 1865, Art. IV, Sec. 2.
[150]Constitution, 1875, Art. IV, Sec. 2.

for the second Representative and three additional ratios for each additional Representative, as fixed in the Constitution of 1865, it was now provided that one and one-half additional ratios should be sufficient for the second Representative, the same number for the third, two additional ratios for the fourth and two and one-half additional ratios for each additional Representative in excess of four.[151] Under the plan adopted it was estimated that the larger counties would receive twelve additional Representatives and that of these St. Louis county, including the city of St. Louis, would receive three.[152] While the new system was not nearly so favorable to the more populous counties as the provision in the proposed Constitution of 1845,[153] it was less discriminating than the plan included in the amendment of 1849,[154] and marked a distinct advance over the provisions in the constitution of 1865.[155]

The single ticket plan of representation introduced in 1865 was retained, though provision was made that when any county was entitled to more than ten representatives the circuit court should divide the county into districts so as to give each district not less than two, nor more than four Representatives.[156] No change was made in the apportionment of Senators but, as a check upon gerrymandering, it was provided that the districts should be "as nearly equal in population as may be,"[157] and that in districts containing two or more counties the latter should be contiguous, the districts as compact as may be, and in the formation of the same no county should be divided.[158] Moreover, as the Legislature after the census of 1870 had failed to redistrict the State, it was now provided that in the event that the Legislature should fail or refuse to divide the State into

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[151]Ibid.
[152]See below, p. 877.
[153]Ante, p. 15.
[154]Ante, p. 16.
[155]Ante, p. 23.
[156]Constitution, 1875, Art. IV, Sec. 3.
[157]Ibid., Sec. 5.
[158]Ibid., Sec. 9.

senatorial districts after each decennial census, such duty should be performed by the Governor, Secretary of State and Attorney-General.[159]

As a result of the tendency of the Legislature to hold adjourned sessions, the rule of annual sessions had practically been introduced. This was now prevented by the provisions that the General Assembly should meet in regular session once only in every two years,[160] and that any adjournment or recess for more than three days should constitute an adjournment *sine die*.[161] Additional evidence of a prevailing belief that there was too much legislation is found in the adoption of a plan for restricting the length of the session which was introduced by the amendment of 1849 but abolished again in 1857.[162] As reintroduced in the Constitution of 1875, it fixes a maximum compensation of five dollars a day for members of the Legislature with the provision that after the first seventy days of the session this shall be reduced to one dollar except that in a revising session the reduction does not take effect until after the first one hundred and twenty days of the session.[163] Compensation for mileage, stationery, etc., was also strictly regulated.[164]

The tendency to restrict the Legislature manifested itself also in the form of increased power for the Executive. The number required to overcome the Governor's veto was now increased from the majority required under previous constitutions to two thirds of all the members elected to each house.[165] Moreover, the content of the power was enlarged by giving the Governor authority to veto specific items in appropriation bills.[166] Finally, recognition of the fact that there is a great congestion of bills at the close of a session resulted in giving the Governor thirty days within

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[159]Ibid., Sec. 7.
[160]Ibid., Sec. 20.
[161]Ibid., Sec. 21.
[162]Ante, p. 17.
[163]Constitution. 1875, Art. IV., Sec. 16.
[164]Ibid.
[165]Ibid., Sec. 39.
[166]Constitution, 1875, Art. V, Sec. 13.

which to approve or disapprove any measure presented to him within ten days of the adjournment of the Legislature.[167] The provision of the Constitution of 1865 preventing the Legislature in special session from acting upon any matter not included in the Governor's proclamation[168] was retained with the addition that the Governor could recommend other matters by special message after the Legislature had convened.[169] In addition to the requirement existing in previous Constitutions, that the Governor should recommend measures to the Legislature, there now appeared the provision that at the beginning of each regular session he should present estimates of the amount of money required to be raised by taxation of all purposes.[170] This provision taken in connection with the Governor's power to veto specific items in appropriation bills, appears to contain the germ of an executive budget system.

The organization of the Executive Department was not materially changed. The two-year term for elective State executive officials introduced in 1865 for all except the Superintendent of Schools,[171] was now abandoned and the four-year term of the Constitution of 1820 restored, the Governor and Treasurer being ineligible to re-election as their own successors.[172] A number of ex-officio boards were provided including the State Board of Equalization,[173] and Board of Education,[174] which had been created in 1865.[175]

There was no important change made in the organization of the Supreme or circuit courts but the congested docket of the former led to the creation of the St. Louis Court of Appeals which it was hoped would dispose finally of many cases and thereby relieve the Supreme Court. This court was limited in its jurisdiction to the City of St.

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[167]Ibid., Sec. 12.
[168]Constitution of 1865, Art. V, Sec. 7.
[169]Constitution, 1875, Art. IV, Sec. 55.
[170]Ibid., Sec. 10.
[171]Ante, p. 24.
[172]Constitution, 1875, Art. V, Sec. 2.
[173]Ibid., Art. X, Sec. 18.
[174]Ibid., Art. XI, Sec. 4.
[175]Constitution, 1865, Art. IX, Sec. 3.

Louis and the counties of St. Louis, St. Charles, Lincoln and Warren, and it was to consist of three judges elected for terms of twelve years by the voters of the city and counties named.[176] The provisions of previous constitutions which required the Supreme Court to be held in different districts of the State[177] were now eliminated and all of its terms were to be held at the State capitol.[178] A section of the Constitution of 1865 which required the Supreme Court to give its opinion upon questions of constitutional law, when required by the Governor or either house of the Legislature,[179] was also omitted at this time.

The Constitution of 1865 had introduced into the declaration of rights, provisions enabling property to be forfeited for treason,[180] restricting the amount of land which could be held by religious corporations,[181] and declaring void gifts and transfers to them or for their benefit.[182] These provisions had aroused considerable hostility and they were eliminated by the Constitutional Convention of 1875. It was also provided that a grand jury should consist of twelve men of whom nine could find an indictment and that in courts not of record a jury could consist of less than twelve[183].

Suffrage as defined in the Constitution of 1875[184] was not materially different from that of the Constitution of 1865 after the adoption of the amendments of 1870.[185] The one important exception was the failure to include the educational qualification of the Constitution of 1865,[186] which was not to become effective until January 1, 1876, and hence never came into operation. Some changes were made regarding registration. It will be recalled that the general registration which was associated with the "iron

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[176]Constitution, 1875, Art. VI, Secs. 12, 13.
[177]Constitution, 1820, Art. V, Sec. 5; Constitution, 1865, Art. VI, Sec. 5.
[178]Constitution, 1875, Art. VI, Sec. 9.
[179]Constitution, 1865, Art. VI, Sec. 11.
[180]Constitution, 1865, Art. I, Sec. 26.
[181]Ibid., Sec. 12.
[182]Ibid., Sec. 13.
[183]Constitution, 1875, Art. II, Sec. 28.
[184]Ibid., Art. VIII, Sec. 2.
[185]Ante, p. 21.
[186]Constitution, 1865, Art. II, Sec. 19.

clad oath" was unpopular and had been abolished in 1873 when the Legislature was given authority to provide for registration only in cities with more than ten thousand inhabitants.[187] The hostility still continued and the Constitution, while requiring the Legislature to enact registration laws for all cities and counties having more than one hundred thousand inhabitants, did not permit it to do this for any city which did not contain more than twenty-five thousand population.[188]

It has already been pointed out[189] that the Constitution required the Legislature to appropriate not less than 25 per cent of the general revenue of the State for the support of public schools. This marked a great advance in the development of the principle that public education was a matter of State as well as local concern. While the other provisions of the article on education followed the general model of the Constitution of 1865, some features were less progressive in character. Thus, for example, the age for free public school instruction, established by the Constitution of 1865, between five and twenty-one years,[190] was changed in 1875 to between six and twenty years.[191] The former Constitution contained a provision expressly authorizing the Legislature to enact a limited compulsory education law[192] but this was not included in the Constitution of 1875. The Constitution of 1865 required the Legislature, so far as possible, to incorporate all local school funds into the State public school fund and in distributing the annual income of the latter to take into consideration local funds so as to "equalize the amount appropriated for common schools throughout the state."[193] The Constitution of 1875, on the other hand, expressly recognized the county school funds and provided that the income therefrom should be appro-

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[187]Ante, p. 21.
[188]Constitution, 1875, Art. VIII, Sec. 5.
[189]Ante, p. 31.
[190]Constitution, 1865, Art. IX, Sec. 1.
[191]Constitution, 1875, Art. XI, Sec. 1.
[192]Constitution, 1865, Art. IX, Sec. 7.
[193]Ibid., Sec. 9.

priated for free public schools in the several counties.[194] While the Constitution of 1865 permitted the establishment of separate schools for children of African descent,[195] the Constitution of 1875 made this obligatory.[196] Both Constitutions provided for the State University, the Constitution of 1875 vesting its government in a board of nine curators appointed by the Governor with the consent of the Senate.[197]

The article on corporations was of much greater significance than in the other Constitutions. The Constitution of 1820 was concerned only with banking corporations.[198] The Constitution of 1865 prohibited the giving to banks the privilege of issuing bank notes and required the enactment of laws to enable existing banks of issue to reorganize as national banks.[199] It also contained a few sections relating to corporations in general. In the Constitution of 1875, however, the greater part of the article on corporations is devoted to railroads, thirteen of the twenty-seven sections relating to this subject. Railroads were declared public highways and railroad companies common carriers and the Legislature was authorized to fix reasonable maximum rates and to pass laws to prevent discrimination and to correct abuses.[200] Railroads were forbidden to give passes to any State, county or municipal officers and the latter were forbidden to accept such passes under penalty of forfeiture of office.[201] The prohibition upon the creation of corporations by special act had been introduced in 1865.[202] As a check upon the creation of corporations, a fee of fifty dollars was required for the first fifty thousand dollars or less of capital stock and a further sum of five dollars for each additional ten thousand dollars of stock.[203] State participa-

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[194]Constitution, 1875, Art. XI, Sec. 8.
[195]Constitution, 1865, Art. IX, Sec. 2.
[196]Constitution, 1875, Art. XI, Sec. 3.
[197]Constitution, 1865, Art. IX, Sec. 4; Constitution, 1875, Art. XI, Sec. 5.
[198]Ante, p. 9.
[199]Constitution, 1865, Art. VIII, Secs. 1, 3.
[200]Constitution, 1875, Art. XII, Sec. 14.
[201]Ibid., Sec. 24.
[202]Constitution, 1865, Art. VIII, Sec. 4; Constitution, 1875, Art. IV, Sec. 53; Art. XII, Sec. 2.
[203]Constitution, 1875, Art. X, Sec. 21.

tion in any bank was prohibited[204] and no corporation with banking powers, except deposit and discount, could be created except with the approval of a majority of the voters of the State. Bank officials were made civilly and criminally liable in case they received deposits or created debts after they had knowledge that the bank was insolvent or in failing circumstances.[205]

The article prescribing the mode of amending the Constitution was not different in any essential detail from the similar article in the Constitution of 1865. An amendment could be proposed by an absolute majority in each house, and ratified at the next general election by a majority of the voters voting on that proposition.[206] Any number of amendments may be proposed but each amendment must be submitted separately.[207] The Legislature was also authorized to submit to the voter the question of holding a Constitutional Convention. If a majority of the voters on that question were in favor of a Convention, the Governor was required to order an election of two delegates for each senatorial district. The Constitution as drafted by the Convention must be submitted to the voters at a special election and if ratified by a majority it will become the Constitution of the State at the end of thirty days after such election.[208]

### Constitutional Amendments, 1875-1920.

The prolonged delay in publishing the journal of the Constitutional Convention of 1875 makes it possible to include with this survey of constitutional development an account of the amendments to the Constitution of 1875. This should be of value as indicating defects which existed or have developed in that instrument and the remedies suggested or put in operation. Ninety-nine amendments

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[204]Ibid., Art. XII, Sec. 25.
[205]Ibid., Sec. 27.
[206]Ibid., Art. XV, Sec. 2.
[207]This provision is construed in Gabbert v. C. R. I. & P. Ry. Co., 171 Mo. 84
[208]Constitution, 1875, Art. XV, Sec. 3.

have been proposed of which twenty-three have been approved by the voters, sixty-three have been rejected and thirteen remain to be acted on at the November election of 1920. Every General Assembly since 1875 except three has proposed one or more amendments. These figures become more impressive when it is pointed out that all but thirteen of these amendments have been submitted to the voters during this century, an average of nearly eight at each biennial election. A total of thirty amendments were voted upon at the three elections in 1910, 1912 and 1914. Only three amendments were submitted in 1916 and nine in 1918, but all records are broken by the thirteen amendments which will be presented to the voters next November. There is here evidenced a growing conviction that many of the provisions of the Constitution are no longer adapted to present conditions.

The fact that only a little more than 25 per cent of the amendments voted upon were ratified is due to two causes. First, many voters do not show much discrimination but manifest a strong tendency to vote the same way on all amendments. Thus at every election except in 1884, 1908 and 1916, all amendments submitted have been either all ratified or all rejected. At every election beginning with 1910 an amendment has been submitted involving prohibition, woman suffrage or the single tax, to all of which the majority of the voters were opposed. The result has been the defeat of all amendments except in 1916, when there were only three amendments submitted and an effective organization succeeded in creating sufficient public attention to ratify an amendment permitting the granting of pensions to the deserving blind. The second influence operating to cause the defeat of the process of Constitutional amendment has been the growing conviction that it is inadequate to remedy the defects of the existing situation; that amendments at best would be merely palliative and that what is needed is a general revision by a Constitutional Convention.

The first amendment to the Constitution of 1875 which was ratified by the voters was the outgrowth of the congested docket of the Supreme Court. As previously indicated, this condition existed in 1875 and the Constitutional Convention sought to correct it by creating the St. Louis Court of Appeals.[209] In 1882, an amendment increasing the number of Judges of the Supreme Court to six and dividing the court into two divisions[210] was rejected by the voters. Two years later the voters approved an amendment establishing the Kansas City Court of Appeals, dividing the counties of the State between this court and the St. Louis Court of Appeals and authorizing the Legislature to establish a third court of appeals and to change the districts and the pecuniary limit of jurisdiction of such courts.[211] The courts of appeals, however, did not relieve the Supreme Court of its burden and in 1890 an amendment was ratified which increased the number of Supreme Court Judges to seven and established a civil and a criminal division of such court.[212]

The congestion of cases still continued. In 1895 the Legislature sought to correct some of the difficulties growing out of questions of jurisdiction but the amendment[213] submitted was rejected by the voters. The same was true of an amendment proposed in 1907 increasing the number of Judges of the Supreme Court to nine and creating a third division. The Legislature in 1919 proposed a similar amendment[214] and also one increasing the number of judges of the St. Louis Court of Appeals to six[215] and these will be voted upon next November. While the Legislature has done something to relieve conditions by providing for Supreme Court Commissioners, the bar of the State has indicated its opinion that conditions demand a revision of the entire article relating to the Judiciary. Attempts to expedite the

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[209]Ante, p. 38.
[210]Laws, 1881, p. 228.
[211]Laws, 1883, p. 215.
[212]Laws, 1889, p 322.
[213]Laws, 1895, p. 286.
[214]Laws, 1919, p. 762.
[215]Laws, 1919, p. 763.

procedure in the lower courts are to be seen in amendments adopted in 1900 authorizing in civil cases a two-third's jury verdict in courts not of record and a three-fourths' jury verdict in courts of record,[216] making indictment and information concurrent remedies[217] and providing that a grand jury shall be convened only by order of a judge.[218]

The provision of the Constitution prohibiting the giving of public money or thing of value to any individual or corporation[219] prevented the granting of pensions to officials and employees. In 1892 an amendment was approved which permitted the Legislature to authorize cities to maintain pension funds for disabled firemen[220] but similar amendments regarding pensions for policemen proposed in 1903[221] and 1909[222] and for public school teachers proposed in 1909[223] were rejected. An attempt to grant authorization for pensions for the deserving blind[224] was defeated in 1914 but two years later a similar amendment[225] was approved. On account of the limited revenue the Legislature was unable to make an appropriation for such pensions. Hence, in 1919, it submitted an amendment requiring a special tax of not less than one-half of one cent and not more than three cents on the one hundred dollars' valuation to be levied for this purpose. This will be voted on next November.[226]

Limitations upon the financial powers of the State and its local subdivisions have been responsible for most of the amendments proposed and adopted. It is impossible to go into detail regarding these amendments. The following statement regarding those which have been approved will give some idea of the nature of the difficulties which have

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[216]Laws, 1899, p. 381.
[217]Ibid., p. 382.
[218]Ibid.
[219]Ante, p. 31.
[220]Laws, 1891, p. 221.
[221]Laws, 1903, p. 278.
[222]Laws, 1909, p. 908.
[223]Ibid.
[224]Laws, 1913, p. 782.
[225]Laws, 1915, p. 411.
[226]Laws, 1919, p. 759.

arisen. In 1900 the voters ratified an amendment[227] authorizing the levy of a special road tax but exempting St. Louis, Kansas City, and St. Joseph from its provisions. Similar amendments, without the exemption, had been rejected in 1884[228] and 1886[229] and one applying only to counties with less than 100,000 inhabitants was rejected in 1894.[230] In 1906 the Missouri Supreme Court declared the amendment adopted in 1900 invalid as the exemption of the three cities violated the Fourteenth amendment of the Constitution of the United States.[231] Finally, in 1908, the voters approved a similar amendment applying to all counties without any exemption.[232]

In 1900 there were also approved three other amendments of financial significance. Two had to do with the St. Louis World's Fair, authorizing St. Louis to aid it by issuing five millions in bonds[233] and the Legislature to appropriate one million dollars from the State sinking fund for an exhibit at the Fair.[234] The third amendment which provided for taxing mortgages as interests in the property mortgaged and for dividing the assessment between the mortgagor and mortgagee,[235] was held to be in conflict with the Constitution of the United States[236] and was repealed by an amendment[237] adopted in 1902.

By 1901, the State bonded debt had been reduced to a small amount which it was clear would be extinguished in the near future. There remained, however, certificates of indebtedness to the public school and state seminary funds which had been created by the using of these funds for the purchase and retirement of equivalent amounts of State bonds. As the certificates furnished a safe and profitable

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[227]Laws, 1905, p. 313.
[228]Laws, 1883, p. 217.
[229]Laws, 1885, p. 255.
[230]Laws, 1893, p. 273.
[231]Johnson v. C. B. & Q. Ry. Co., 195 Mo. 228.
[232]Laws, 1909, p 906.
[233]Laws, 1905, p. 316.
[234]Ibid., p. 317.
[235]Ibid., p. 315.
[236]Russell v. Croy, 164 Mo. 69.
[237]Laws, 1905, p. 317.

investment for the two funds, the Legislature submitted an amendment making them practically perpetual but providing for the investment of future accumulations in these funds in approved county, municipal and school district bonds.[238] The same amendment made provision for a State interest tax not exceeding three cents on the hundred dollars' valuation to pay the interest on these certificates. This amendment was ratified in 1902.

On account of the increasing population of cities, the limitations upon their financial powers became a matter of serious concern. In 1902 an amendment was approved which authorized St. Louis to levy in addition to the rate allowed by the Constitution for municipal purposes, the rate which would be allowed for county purposes if St. Louis were part of a county.[239] At the same time was ratified an amendment which enabled St. Louis and Kansas City in computing their total bonded debt for the purpose of the five per cent maximum established by Section 12 of Article X of the Constitution,[240] to exclude all bonds issued in connection with their municipally owned waterworks and in the case of St. Louis all bonds assumed by the city at the time of its separation from the county.[241] Of the same general character was another amendment approved at the same time which authorized cities between 2,000 and 30,000 inhabitants to become indebted an additional five per cent for the purpose of constructing municipally owned water works or electric light plants.[242] Finally, in 1906, an amendment was adopted which permitted a county to become indebted in excess of the five per cent maximum for road and bridge purposes.[243] While this amendment was under consideration in the Legislature a clause was added providing that Section 12 of Article X should not apply to counties containing cities with 100,000 inhabitants nor to cities with

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[238] Laws, 1905, p. 318.
[239] Ibid.
[240] Ante, p. 29.
[241] Laws, 1905, p. 320.
[242] Laws, 1905, p. 324.
[243] Laws, 1909, p. 905.

over 300,000 inhabitants. This proviso, however, was not set forth in the amendatory clause of the resolution and hence under the ruling in Gabbert v. C. R. I. & P. Ry. Co., 171 Mo. 84, did not become a part of the amended section.

The evils arising out of constitutional provisions limiting in detail the financial powers of the Legislature and local subdivisions and the difficulty of correcting these by the process of amendment are well illustrated by the history of Section 12 of Article X of the Missouri Constitution. It is, of course, obvious that a debt incurred for a productive expenditure should not be subject to the same restrictions as those incurred for nonproductive purposes. Hence there was adequate justification for the two amendments adopted in 1902 giving St. Louis and Kansas City and cities between 2,000 and 30,000 inhabitants greater debt incurring power for the purpose of municipal ownership of public utilities. But the amendments being specific instead of general in character, could not of course provide for future contingencies and hence the demand for new amendments continued to arise. In the first place, the situation was complicated by a decision of the Supreme Court holding that the second five per cent permitted under the amendment of 1902 must be restricted to debts for water works or electric light plants and that even if a city had used up part or all of its first five per cent debt allowance for either or both of these purposes it could not use the second five per cent for other purposes such as the building of a sewer system.[244] In other words, a city must build its public buildings, sewers, etc., first and later construct its water works and electric light plant.

In the second place, there were other public utilities such as gas works, heating plants, street railways, etc., coming under the head of productive expenditures which clearly could not take advantage of the second five per cent authorized by the amendment of 1902. Finally, that amendment was restricted to cities between 2,000 and 30,000

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[244] State v. Wilder, 197 Mo. 1.

inhabitants and could afford no relief to cities outside this group, for example, Joplin and Springfield since 1910, St. Joseph and, except as regards water works, St. Louis and Kansas City. While none of the amendments for securing relief in these matters has been ratified in recent years for the reasons indicated above,[245] their proposal by the Legislature indicates the urgency of the need. In 1907 an amendment was proposed to overcome the difficulty created by the decision of the Supreme Court in the Wilder case.[246] It provided that any debt previously or thereafter incurred for water works or electric light plants should not be considered in determining the original five per cent for which the cities concerned could become indebted. Another amendment in the same year proposed to authorize cities with 100,000 inhabitants to become indebted an additional five per cent for the purpose of acquiring subways[247] and the same amendment was proposed again in 1913[248] but all met the same fate. At the same time was rejected an amendment proposing to authorize Kansas City to issue public utility bonds to an amount not exceeding an additional twenty per cent of its assessed valuation for the purpose of acquiring any public service utility for the use of its citizens.[249] The principal of these public utility bonds was not to constitute an obligation of the city enforcible out of funds raised by taxation.

At the election in November of this year there will be submitted an amendment which was framed to meet the needs of St. Louis, Kansas City and St. Joseph.[250] It proposes to change the general rule of Section 12 of Article X of the Constitution so far as cities of 75,000 inhabitants or more are concerned by fixing ten per cent instead of five per cent as the maximum for the incurring of indebtedness. It also authorizes the same cities to issue public utility bonds

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[245]Ante, p. 43.
[246]Ante, p. 48.
[247]Laws, 1907, p. 453.
[248]Laws, 1913, p. 780.
[249]Laws, 1913, p. 776.
[250]Laws, 1919, p. 751.

as provided in the amendment referred to above, which was proposed in 1913. The pending amendment differs in one feature from the one proposed in 1913 and from other amendments of this general character. All previous amendments, those rejected as well as those ratified, required the consent of two-thirds of the voters before any indebtedness authorized could be incurred. This amendment, however, would authorize the issuance of the public utility bonds with the assent of four-sevenths of the voters. Another amendment to be voted on this year proposes to amend the amendment adopted in 1902,[251] by adding ice plants to the public utilities for which the additional five per cent indebtedness may be incurred and by extending its provisions to cities of less than 2,000 inhabitants.[252]

Counties also have found it necessary to appeal for amendments of Section 12 of Article X. It has been indicated that in 1906 authority was granted for indebtedness above the five per cent for road and bridge purposes.[253] In 1909, an amendment was proposed to secure similar authorization for the erection of a poor house[254] but it was rejected by the voters despite the fact that the Constitution as originally adopted expressly authorizes this in the case of a court house or jail. The county of St. Louis which, as a suburb of the city of St. Louis, has a large urban population, sought authority to incur indebtedness for the construction of sewers and the acquisition of water works. While this was approved by the Legislature in 1911,[255] it failed of ratification with all of the other amendments at the election in 1912.

The restrictions upon the rates of taxation have been found burdensome in many cases and attempts have been made to amend these provisions of the Constitution. Refer-

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[251]Ante, p. 48.

[252]Laws, 1919, p. 758. See also amendment rejected in 1918 which proposed to add improvement of streets as an item for which additional five per cent could be incurred; Laws, 1917, p. 581.

[253]Ante, p. 47.

[254]Laws, 1909, p. 912.

[255]Laws, 1911, p. 448.

ence has already been made to the numerous attempts which were finally successful to secure authority for a special county tax for road and bridge purposes[256] and also to the amendment giving the city of St. Louis authority to levy the county as well as the municipal rate.[257] At the same time that the latter provision was adopted, the voters also ratified an amendment permitting boards of education in cities of 100,000 inhabitants to levy sixty cents instead of forty cents, which was the maximum which could be levied in other districts without the consent of a majority of the voting taxpayers.[258] A number of attempts have been made to change the rates for school purposes[259] and an amendment to be voted on this year seeks to remove the discrimination upon rural school districts by increasing the maximum rate for school purposes, which can be authorized by tax paying voters from sixty-five cents to one dollar, the same amount permitted in city districts.[260] There have also been attempts to change the rates for city purposes[261] and for improvement of roads.[262] At the election next November amendments will be submitted authorizing a rate of fifty cents for road purposes when voted by the voters of a road district[263] and authorizing the Legislature to incur a debt not exceeding sixty million dollars for road purposes.[264] Another amendment to be voted on at the same time provides for the issuance of state bonds not exceeding one million dollars for the purpose of creating a soldiers' settlement fund to provide employment and rural homes for soldiers and sailors.[265]

The "home rule charter" provisions of the Constitution

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[256]Ante, p. 46.
[257]Ante, p. 47.
[258]Laws, 1905, p. 322.
[259]Laws, 1903, p. 282; Laws, 1917, pp. 577-579.
[260]Laws, 1919, p. 755.
[261]Laws, 1909, p. 911; Laws, 1911, p. 446.
[262]Laws, 1907, p. 457; Laws, 1909, p. 913; Laws, 1913, p. 779; Laws, 1917, pp. 579-581.
[263]Laws, 1919, p. 755.
[264]Ibid., p. 757.
[265]Laws, 1919, p. 760.

regarding St. Louis[266] did not contain express authority for a revision of the charter by a new board and an amendment for this purpose was adopted in 1902.[267] As the original provision for amending the charter with the consent of three-fifths of the voters at an election had not worked satisfactorily because of the failure of many voters to vote either way, this amendment now provided that three-fifths of the voters voting for or against each charter amendment should be sufficient for its adoption. Finally, the original requirement that the charter must provide for two houses of the city council was changed so as to require only one house. This amendment did not apply to the "home rule charter" provisions for other cities of over 100,000 population and Kansas City has made a number of attempts to amend these sections. In 1914, an amendment similar to that part of the St. Louis amendment of 1902 which provided for counting only the votes for or against charter amendments was defeated.[268] In 1918, an amendment was submitted by initiative petition providing for a charter commission for the revision of the charter whenever such proposition had been approved by the voters after submission by the city council or by initiative petition.[269] The amendment also provided for charter amendments, submitted by a charter commission, the city council or initiative petition and ratified by a majority of those voting on each amendment. Finally, the people of the city were given a free hand in determining the form of their government by the omission of the provision requiring a mayor and two houses of legislation. This amendment was defeated but the next Legislature submitted substantially the same amendment and it will be voted upon again next November.[270]

Additional evidence of the difficulty of getting voters interested in propositions is furnished by an amendment

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[266] Ante, p. 34.
[267] Laws, 1905, p. 320.
[268] Laws, 1914, p. 783.
[269] Official Manual, 1919-20, pp. 428, 429.
[270] Laws, 1919, p. 749.

adopted in 1902 which changed the law regarding township organization by providing for its adoption by a majority of the voters of the county voting upon that propostition instead of by a majority of the voters at the election.[271]

When the Constitution of 1875 was adopted the term of most of the county officials was only two years. The tendency arose, however, to lengthen the term to four years. It was possible for the Legislature to determine this question except in the case of the sheriff and coroner whose terms were fixed at two years by the Constitution.[272] An amendment adopted in 1906 extended these terms to four years.[273]

The only amendment of the Constitution of 1875 which remains for consideration is the one providing for the initiative and referendum which was adopted in 1908.[274] A similar amendment with stricter requirements but applying to the local as well as State government had been defeated in 1904.[275] The amendment adopted in 1908 applies to constitutional amendments as well as matters of ordinary legislation. The initiative has been used only in connection with constitutional amendments. A total of fourteen amendments were proposed, one or more at each election beginning in 1910 and all were defeated.[276] One amendment submitted by the initiative will be voted on in November of this year.[277]

Four acts of the Legislature were by referendum petitions submitted to the voters in 1914 and all were rejected.[278] The Prohibition Enforcement act and the Workmen's Compensation act passed by the last Legislature were held up by referendum petitions and will be voted on this year.

In addition to those already referred to, the following amendments will be submitted to the voters at the forth-

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[271]Laws, 1905, p. 324.
[272]Constitution, 1875, Art. IX, Sec. 10
[273]Laws, 1909, p. 906.
[274]Laws, 1909, p. 906.
[275]Laws, 1903, p. 280.
[276]Official Manual, 1915-16, pp. 603, 604; 1917-18, pp. 484, 485; 1919-20, pp. 428, 429.
[277]See below, p. 54.
[278]Official Manual, 1915-16, p. 604.

coming November election. One amendment repeals the provision disqualifying soldiers and sailors in the regular army of the United States from voting and requires the Legislature to provide for absentee voting by electors absent from the State on account of military service.[279]

Another amendment undertakes to increase the pay of members of the Legislature. The inadequacy of this compensation led to an amendment proposed in 1907 providing an annual salary of seven hundred and fifty dollars.[280] The next Legislature proposed an increase in the per diem from five to ten dollars.[281] Four years later the Legislature proposed an annual salary of one thousand dollars.[282] All of these proposals were defeated and the last Legislature renewed the proposal of 1913, except that it omits all provision for mileage or stationery and provides that no member shall receive any allowance other than his salary and actual expenses while serving on committees to examine institutions other than those at the State capitol.[283]

Finally, an amendment submitted by initiative petition proposes to amend that part of Article XV which provides for revising the Constitution. It provides that each political party shall nominate not more than one of the two members of the the Constitutional Convention to be elected from each senatorial district. It also provides for fifteen members to be elected at large, nominations therefor to be by petition. It requires that the question of holding a Constitutional Convention shall be submitted to the voters at a special election in August, 1921, and that every twenty years thereafter such question shall be automatically submitted to the voters. This amendment is the work of the New Constitution Association which has been endeavoring for a number of years to have the question submitted to a vote of the people. It is believed the provisions for bi-partisan

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[279]Laws, 1919, p. 763.
[280]Laws, 1907, p. 457.
[281]Laws, 1909, p. 914.
[282]Laws, 1913, p. 779.
[283]Laws, 1919, p. 748.

and non-partisan membership will overcome the objections which have defeated former attempts to secure a Constitutional Convention.

It is an interesting coincidence that this survey of constitutional evolution in Missouri is completed on July 19, 1920, just one hundred years after the adoption of the Constitution of 1820. As the Constitution of today contains the essential features of the Constitution of 1820 this date may be taken as the Centennial of Missouri's Constitution. While the most fundamental characteristics of the Constitution of 1820 such as the division of powers, the bicameral Legislature, the independent Executive and Judiciary have been preserved in the existing Constitution, noteworthy changes have been introduced. Foremost of these has been the introduction of numerous limitations upon the power of the Legislature. Restrictions have been imposed upon its procedure, its enactment of local and special laws and its control over finances, while its power to regulate education, corporations and the structure and powers of State and local government has been seriously limited by the positive provisions regarding these matters that have been incorporated into the Constitution. Legislative power has also been restricted by the strengthening of the Governor's veto power, by the requirement for popular participation in the amendment of the Constitution and finally by introduction of a popular referendum on legislative acts and the possibility of direct popular enactment of laws without legislative participation.

The second most noticeable change has been the substitution of the long for the short ballot. This has resulted from the elimination of appointive tenure and the establishment of popular election of the principal executive officials and judges.

Finally, the restrictions upon the Legislature and the regulation of matters in detail in the Constitution have resulted in the proposal by the Legislature and by initiative petition of numerous constitutional amendments. These,

with the addition of legislative acts referred by petition to the voters, increased the size of the ballot to such an extent that the Legislature provided for a separate ballot for all propositions of this character.[284]

The men who framed the Constitution of 1875 appreciated the value of historical evolution. They realized that they were dealing with the Constitution which had been adopted in 1820 and changed from time to time to meet changed conditions. They undertook to adapt it to the problems of their day. If the demand for a new Constitution leads to a Constitutional Convention, the members of that body will undoubtedly be influenced by similar considerations. While modifying the existing document so as to enable the government to function in accordance with modern needs and popular demands, they will hold fast to all these features that have demonstrated their usefulness through the century of Missouri's constitutional development.

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[284]Laws, 1909, p. 492.